

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

**PENTECH FINANCIAL SERVICES, INC.
910 E. HAMILTON AVENUE, SUITE 400
CAMPBELL, CALIFORNIA 95008,**

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PLAINTIFF,

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V.

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CASE NO. _____

**OLD DOMINION SAW WORKS, INC.
3117 ODD FELLOWS ROAD
LYNCHBURG, VIRGINIA 24501**

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SERVE ON REGISTERED AGENT:

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**JOY LEE PRICE, ESQUIRE
PO Box 6320
2306 ATHERHOLT ROAD
LYNCHBURG, VIRGINIA 24505**

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AND

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**ROBERT L. IRVINE
206 PIMLICO PLACE
LYNCHBURG, VIRGINIA 24503,**

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DEFENDANTS.

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COMPLAINT

Plaintiff, Pentech Financial Services, Inc. ("Pentech"), by its attorneys, hereby sues
defendants Old Dominion Saw Works, Inc. ("Old Dominion") and Robert L. Irvine (together, the
"Defendants"), and for its causes of action states:

Jeremy S. Friedberg, VSB No. 40228
Gordon S. Young, VSB No. 68822
Leitess Leitess Friedberg + Fedder PC
One Corporate Center
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400
(410) 581-7410 (facsimile)

Attorneys for Pentech Financial Services, Inc.
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PARTIES

1. Plaintiff Pentech is a corporation organized under the laws of the State of California, with its principal place of business located in Campbell, California. Pentech is qualified to do business in Virginia.

2. Defendant Old Dominion is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business located in Lynchburg, Virginia.

3. Mr. Irvine, defendant, is an individual residing in Lynchburg, Virginia, and is a guarantor of Old Dominion's obligations to Pentech. Mr. Irvine resides or resided in this district at the time of the transactions described in this Complaint.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332. Plaintiff Pentech is a California corporation with its principal place of business in California, and all Defendants are citizens of Virginia. All issues of law and fact are among citizens of different states.

5. Venue is proper in the Western District of Virginia under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Pentech's claims occurred in this district.

6. The amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorneys' fees.

FACTS COMMON TO ALL COUNTS

7. Pursuant to an Equipment Lease Agreement dated August 8, 2006, as amended (the "Lease"), Old Dominion leased from Capital Network Leasing Corp. ("Capital Network Leasing") one (1) Gockel G50eIT Precision Knife Grinder 3100mm, serial number 8148, together with all related components, additions, accessions, attachments, substitutions and

replacements (collectively, the "Equipment"). A copy of the Lease is attached hereto as Exhibit 1 and incorporated herein by reference.

8. To induce Capital Network Leasing to provide lease financing for the Equipment to Old Dominion, and as additional security therefor, Mr. Irvine executed a Continuing Guaranty dated August 2, 2006 (the "Guaranty"), whereby he absolutely and unconditionally guaranteed the payment of Old Dominion's obligations to Capital Network Leasing under the Lease. A copy of the Guaranty is attached hereto as Exhibit 2 and incorporated herein by reference.

9. Capital Network Leasing assigned to Pentech all of its right, title, and interest in and to (a) the Lease; (b) the Equipment; (c) the Guaranty and all other documents executed in connection with the Lease; and (d) all amounts due under the Lease and related documents.

10. Pentech evidenced its interest in the Equipment by filing a financing statement with the Virginia State Corporation Commission. A copy of the financing statement is attached hereto as Exhibit 3 and incorporated herein by reference.

11. Old Dominion breached the terms of the Lease by, among other things, failing to make payments to Pentech when and as due.

12. Due to Old Dominion's default under the Lease, Pentech accelerated all amounts outstanding under the Lease and made demand upon Old Dominion for payment and surrender of the Equipment.

13. Old Dominion failed and refused to make payment of its outstanding obligations under the Lease and surrender and return the Equipment to Pentech despite demand therefor.

14. Pentech notified Mr. Irvine of Old Dominion's default under the Lease and demanded that he perform as promised under the Guaranty. A copy of the demand letter from

Pentech's counsel to the Defendants, dated December 18, 2008, is attached hereto as Exhibit 4 and incorporated herein by reference.

15. Mr. Irvine defaulted under the Guaranty by failing and refusing to pay Old Dominion's obligations under the Lease, despite Pentech's demand that he perform as promised in the Guaranty.

16. As a direct and proximate result of the Defendants' breaches of the Lease and the Guaranty, Pentech has suffered injury in the amount of \$78,036.96 as of December 12, 2008, plus reasonable attorneys' fees, interest, costs of this action, and other expenses incurred by Pentech in enforcing its rights under the Lease and the Guaranty.

17. Old Dominion unjustly retains possession and custody of the Equipment despite Pentech's demand for the return thereof.

18. The fair market value of the Equipment is \$31,500.00.

19. Pentech's economic injury increases so long as the obligations owed by the Defendants remain unpaid.

COUNT I
(BREACH OF CONTRACT AGAINST OLD DOMINION UNDER THE LEASE)

20. Pentech incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count I.

21. Old Dominion defaulted on its obligations to Pentech under the Lease by, among other things, failing to make payments to Pentech when and as due.

22. Old Dominion failed and refused to pay the amounts owing to Pentech under the Lease.

23. Old Dominion's default under the Lease has injured Pentech in the amount of \$78,036.96 as of December 12, 2008, plus reasonable attorneys' fees, interest, costs of this action, and other expenses incurred by Pentech in enforcing its rights under the Lease.

WHEREFORE, plaintiff Pentech Financial Services, Inc. respectfully requests that this Court enter an order:

- A. Granting judgment in its favor and against Defendant Old Dominion Saw Works, Inc., jointly and severally with co-defendant Robert L. Irvine, in the amount of \$78,036.96, or in such other amount according to proof, plus reasonable attorneys' fees, interest, costs of this action, and other expenses incurred by Pentech in enforcing its rights under the Lease; and
- B. Granting such other and further relief as this cause may require.

COUNT II

(BREACH OF CONTRACT AGAINST MR. IRVINE UNDER THE GUARANTY)

24. Pentech incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count II.

25. The Guaranty contains Mr. Irvine's unconditional and absolute agreement to pay all obligations owed by Old Dominion to Pentech under the Lease.

26. Old Dominion defaulted upon its obligations to Pentech under the Lease as set forth above.

27. Mr. Irvine failed and refused to pay the outstanding obligations of Old Dominion owed to Pentech and therefore is in breach of the Guaranty.

28. As a result of Mr. Irvine's breach of the Guaranty, Pentech has suffered damages in the amount of \$78,036.96 as of December 12, 2008, plus reasonable attorneys' fees, interest,

costs of this action, and other expenses incurred by Pentech in enforcing its rights under the Lease and the Guaranty.

WHEREFORE, plaintiff Pentech Financial Services, Inc. respectfully requests that this Court enter an order:

- A. Granting judgment in its favor and against Defendant Robert L. Irvine, jointly and severally with co-defendant Old Dominion Saw Works, Inc., in the amount of \$78,036.96, or in such other amount according to proof, plus reasonable attorneys' fees, interest, costs of this action, and other expenses incurred by Pentech in enforcing its rights under the Lease and the Guaranty; and
- B. Granting such other and further relief as this cause may require.

COUNT III
(PETITION IN DETINUE AGAINST OLD DOMINION)

29. Pentech incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count III.

30. The Lease entitles Pentech, upon Old Dominion's default, to take possession of the Equipment or to require Old Dominion to return the Equipment to Pentech.

31. Due to Old Dominion's breach of the Lease, Old Dominion is in default thereof, and, as a result, Pentech is entitled to immediate possession of the Equipment.

32. Pentech demanded that Old Dominion surrender possession of the Equipment, which demand Pentech refused.

33. Old Dominion unjustly retains possession of the Equipment without authorization or permission of Pentech and despite Pentech's demand for return of the Equipment.

34. As a direct and proximate result of Old Dominion's unjust detention of the Equipment, Pentech has suffered and will continue to suffer injury in the amount of \$31,500.00, plus pre- and post-judgment interest, attorneys' fees, costs of this action, and other costs and expenses incurred by Pentech in enforcing its rights under the Lease.

WHEREFORE, plaintiff Pentech Financial Services, Inc. respectfully requests that this Court enter an order:

- A. Granting Pentech's Petition in Detinue for seizure of the Equipment;
- B. Directing the U.S. Marshal to seize the Equipment and return it to the possession of Pentech or its duly authorized agent;\
- C. Granting judgment in its favor and against Defendant Old Dominion Saw Works, Inc. in the amount of \$31,500.00 for its unjust detention of the Equipment;
- D. Requiring Defendant Old Dominion Saw Works, Inc. to pay Pentech the costs and expenses it incurred in bringing and prosecuting this action, including its attorneys' fees; and
- E. Granting such other and further relief as this cause may require.

/s/ Gordon S. Young
Jeremy S. Friedberg, VSB No. 40228
Gordon S. Young, VSB No. 68822
Leitess Leitess Friedberg + Fedder PC
One Corporate Center
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400
(410) 581-7410 (facsimile)

Attorneys for Pentech Financial Services, Inc.